

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division

In Re: Circuit City Stores, Inc.,  
Debtor.

Case No. 08-35653-KRH  
Chapter 11 Proceeding

CLEVELAND CONSTRUCTION, INC., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CIRCUIT CITY STORES, INC, )  
 )  
Defendant. )

**NOTICE OF AND MOTION FOR RELIEF FROM AUTOMATIC STAY**

Cleveland Construction, Inc. ("Cleveland") has filed papers with the Court to seek relief from the automatic stay.

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

If you do not want the Court to grant the relief sought in this motion, or if you want the Court to consider your views on the motion, then on or before March 23, 2009, you must file a written response explaining your position with the Court at the following address:

William C. Redden, Clerk  
U.S. Bankruptcy Court  
Eastern District of Virginia  
Richmond Division  
701 E. Broad Street, Suite 4000  
Richmond, VA 23219

If you mail your request or response to the Court for filing, you should mail it early enough so the Court will receive it on or before the date stated above.

Robert H. Chappell, III, Esquire (VSB #31698)  
Jennifer J. West, Esquire (VSB #47522)  
Erin E. Kessel, Esquire (VSB #65360)  
SPOTTS FAIN PC  
411 East Franklin Street, Suite 600  
Richmond, Virginia 23219  
Tel: (804) 697-2000 Fax: (804) 697-2100  
Counsel for Cleveland Construction, Inc.

You must also mail a copy to

Jennifer J. West, Esquire  
SPOTTS FAIN PC  
411 East Franklin Street, Suite 600  
Richmond, Virginia 23219

You must attend the Preliminary Hearing scheduled to be held on **March 30, 2009 at 10:00 a.m.**, in Courtroom 5000, United States Bankruptcy Court, U.S. Courthouse 701 E. Broad Street, Richmond, Virginia.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an Order granting that relief.

**MOTION FOR RELIEF FROM AUTOMATIC STAY**

Cleveland submits the following Motion for Relief from Automatic Stay, requesting the Court permit Cleveland to pursue certain Litigation (as hereinafter defined) in state court. In support of this Motion, Cleveland states the following:

1. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1334. This matter is a “core” proceeding as set forth under 28 U.S.C. § 157.
2. On November 10, 2008 (the “Petition Date”), the Debtor filed under Chapter 11 of Title 11 of the United States Code.
3. On or about February 3, 2009, Cleveland Construction, Inc., a Nevada corporation whose principal place of business is in Ohio, filed a Mechanic’s Lien in the amount of \$505,023.30, in the Clerk’s Office for the District Court of Johnson County, Kansas (the “Mechanic’s Lien”).
4. The Mechanic’s Lien was filed as a result of nonpayment of moneys owed by Circuit City to Cleveland Construction as general contractor in the construction of Circuit City Store #4220, Merriam Village Shopping Center, 6030 Eby Street, Merriam, Kansas (the “Property”).

5. In order to enforce the Mechanic's Lien, Cleveland Construction desires to file a lawsuit in the state court of Kansas (the "Litigation").

6. Circuit City is not the owner of the Property. Nonetheless Circuit City is a necessary party to the Litigation as Circuit City was the party with whom Cleveland Construction contracted to perform the work.

7. Pursuant to Kansas state law, Circuit City is a necessary party to such Litigation.

8. Through Litigation, Cleveland would simply seek the sale of the Property, which is not an asset of the Debtor's bankruptcy estate.

9. Upon the filing of this Bankruptcy, Cleveland was stayed from the filing of the Litigation.

10. The interests of Cleveland in the above-referenced Litigation are not adequately protected constituting cause for granting relief from the automatic stay of 11 U.S.C. § 362.

11. Cleveland requests that the ten-day period under Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure during which the stay remains in effect be waived and any Order granting relief shall become effective immediately upon entry.

WHEREFORE, Cleveland Construction, Inc. respectfully requests that this Court enter an Order:

- (a) Granting it relief from the automatic stay of 11 U.S.C. § 362, to allow Cleveland Construction to pursue Litigation to enforce its Mechanic's Lien, including the sale of the Property;
- (b) Maintaining the automatic stay of 11 U.S.C. § 362 in full force and effect except as otherwise requested herein;

- (c) Waiving the ten-day period under Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure during which the stay remains in effect; or
- (d) Otherwise granting it adequate protection, and that it have such other and further relief as the Court may deem appropriate.

CLEVELAND CONSTRUCTION, INC.

By: /s/ Erin E. Kessel  
Counsel

Robert H. Chappell, III, Esquire (VSB #31698)  
Jennifer J. West, Esquire (VSB #47522)  
Erin E. Kessel, Esquire (VSB #65360)  
SPOTTS FAIN PC  
411 East Franklin Street, Suite 600  
Richmond, Virginia 23219  
Phone: (804) 697-2000 Fax: (804) 697-2100  
Counsel for Cleveland Construction, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Notice of and Motion for Relief from Automatic Stay was served by first class mail and/or electronic means, this 4<sup>th</sup> day of March 2009, to:

Dion W. Hayes  
Joseph S. Sheerin  
Sarah Beckett Boehm  
McGuireWoods LLP  
One James Center  
901 E. Cary St.  
Richmond, VA 23219

Gregg M. Galardi  
Ian S. Fredericks  
Skadden Arps Slate Meagher & Flom LLP  
One Rodney Sq.  
PO Box 636  
Wilmington, DE 19899

Doug Foley  
Daniel F. Blanks  
McGuireWoods LLP  
9000 World Trade Center  
101 W. Main St.  
Norfolk, VA 23510

Office of the U. S. Trustee  
701 E. Broad St., Suite 4304  
Richmond, VA 23219

/s/ Erin E. Kessel